all the requirements for their substance to be considered to be in declaration format.

However, in the advisory action, the examiner alleges that the Sekigucki letters, without explanation, together are not recognizable by the Office as a formal declaration. No basis for this allegation was contained in the advisory action.

After being unable to find any support for the examiner's allegation in the MPEP or any other PTO document, the undersigned telephoned Practice Specialist, Mr. William Dixon to ascertain whether he knew of any such requirement. As the examiner has been informed, Mr. Dixon reviewed the documents at issue online and, while recognizing the unusual nature of the subject documents, could see no reason why they would not together be effective as a formal declaration, as the examiner is requiring. It is the understanding of the undersigned from a voicemail left by the examiner that the examiner has now withdrawn this objection to the Sekiguchi letters, in light of a voicemail left by the undersigned to her to the foregoing effect. This foregoing is a summary of the mentioned voicemail message.

Second Alleged Reason

The examiner's second reason for failing to find the claims to be in condition for allowance is based on an allegation that a "statutory bar" under 35 USC 102(b) "cannot be overcome by an affidavit or declaration, see MPEP 2133.02."

For convenience, the cited MPEP passage is reproduced below:

> 2133.02 Rejections Based on Publications and Patents - 2100 Patentability
> APPLICANT'S OWN WORK WHICH WAS AVAILABLE TO THE PUBLIC BEFORE THE GRACE PERIOD MAY BE USED IN A 35 U.S.C. 102 (b) REJECTION
>
> "Any invention described in a printed publication more than one year prior to the date of a patent application is prior art under Section 102(b), even if the printed publication was authored by the patent applicant." *De Graffenried v. United States*, 16 USPQ2d 1321, 1330 n.7 (Cl. Ct. 1990). "Once an inventor has decided to lift the veil of secrecy from his [or her] work, he [or she] must choose between the protection of a federal patent, or the dedication of his [or her] idea to the public at large." *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 148, 9 USPQ2d 1847, 1851 (1989).
>
> A 35 U.S.C. 102 (b) REJECTION CREATES A STATUTORY BAR TO PATENTABILITY OF THE REJECTED CLAIMS